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November 19, 2007

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 06-172

Dear Ms. Dortch:

Columbia Capital and M/C Venture Partners (the "Telecom Investors") write this letter urging the Commission to deny Verizon's petitions for forbearance pending in WC Docket No. 06-172. In this proceeding, the Commission has an important and unique opportunity to protect competition and ensure that 34 million consumers in Verizon territory continue to enjoy the benefits of UNE-based competition and the innovative services UNE-based competitors have brought to the market. If the Commission squanders this opportunity and continues to erode the fundamental competition policy created by Congress in the 1996 Act, the Commission will not only be responsible for substantial price increases on American consumers and business but will be responsible for impeding investment and innovation in local telecommunications markets nationwide for years to come.

It is important for the Commission to recognize that granting Verizon forbearance in this proceeding will not only impede investment in innovation in Verizon's markets but will effect the investment decisions of carriers and investors nationwide. Private equity and venture capital firms have made considerable investments in CLECs in the last year, providing, for instance the necessary capital to deploy infrastructure to make use of legacy copper loops.¹ Investors will not sit idly by as the Commission signals that its

¹ See e.g. *Domestic Section 214 Applications Filed For The Transfer Of Control Of Integra Telecom Holdings, Inc., Eschelon Telecom, Inc., Electric Lightwave, LLC, and other Subsidiaries of Integra Telecom Holdings, Inc. to Subsidiaries of Warburg Pincus & Co, Banc of America Capital Investors V, L.P., And Boston Ventures L.P.*, WC Docket No. 07-206, Public Notice, DA 07-4323 (Oct. 17, 2007); Press Release,

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policies fostering investment in local competition are no longer worth the paper on which they are printed, but will scale back their investments accordingly and redirect capital to those sectors of the economy where market conditions are more hospitable to new investment. The Telecom Investors thus urge the Commission to maintain the stability it finally has achieved in its unbundling regime and allow the capital markets to invest in further competition and innovation that will benefit American businesses and consumers.

In conducting the public interest analysis under its forbearance standard, the Commission should evaluate the impact of forbearance on innovation in the affected markets. Competitors using UNEs have brought substantial innovations to the market that have benefited consumers. The Commission must evaluate whether a market without UNEs would result in a similar level of innovation. Because the Commission has recognized that innovation — the “provision of new technologies and services to the public” — best serves the public interest, a reduction in the level of innovation in a market is contrary to the public interest and grounds to reject Verizon’s petitions.²

The potential for dramatic retrenchment of investment and innovation by competitors is most ably illustrated by examining the likely impact of forbearance on CLECs using unbundled copper loops to deploy innovative services or bring new services to historically underserved markets. Delivering such innovative services requires substantial expenditures of capital. In order to use UNE copper loops in delivering services, competitors must make substantial investments in equipment to bring the copper loop to life and transmit information — whether it is voice, video or data — to the consumer. Recognizing this fact, the Commission crafted its unbundling policy “to promote the deployment of equipment that can unleash the full potential of the embedded copper loop plant so that consumers can experience enhanced broadband capabilities before the mass deployment of fiber loops.”³

Verizon, however, does not provide a special access analogue for copper loops and has utterly refused to engage competitors in any discussions regarding terms for providing such copper loops on a commercial basis. Without UNEs, CLECs relying on copper loops will no longer have the last mile copper needed to serve their customers. The lack of certainty regarding access to last mile copper will chill further investment in any

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Covad Communications Group Inc. To Be Acquired By Platinum Equity For \$1.02 Per Share, at p.1, (Oct. 28, 2007).

² *Time Warner Entertainment Co and US West Communications, Inc.*, 8 FCC Rcd 7106, 7107-8 (1993).

³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 ¶ 244 (2003) (“TRO”).

infrastructure that relies on copper loops. Thus, the absence of UNEs would squelch further investment in “equipment that can unleash the full potential of the embedded copper loop plant” now on the market or coming to market, undermining policy established in the *TRO*.

The Commission has every reason to maintain, rather than abandon this policy — as it seems to be working. Since the *TRO*, great strides have been made in squeezing higher bandwidths out of copper, belying the derogatory connotation of “narrowband” facilities. ILEC copper plant is an enormous, national asset that has taken over a century to deploy and is still capable of serving the needs of businesses and consumers with ADSL, VDSL, 2BaseTL, DS1 and other copper-based services.⁴

It is now clear that currently deployed copper plant can efficiently be employed to provide new communications services to business and consumers. For example, the VDSL2 standard permits 50 and even 100 Mbps on loops less than 1000 feet. Further advances, such as Digital Spectrum Management and multi-pair bonding, are making it possible to squeeze higher bandwidth at even greater distances.⁵ The 2BaseTL Ethernet standard, for instance, will permit 40 Mbps and deployment to over 90% of loops with multiple pair bonding.⁶

CLECs are innovating and deploying these new technologies in the market to the benefit of consumers and businesses. Cavalier, for example, is offering IPTV services using xDSL copper loops. Cavalier’s IPTV service provides consumers another choice for video services and also brings video services to sectors of the market other providers have historically ignored.⁷ Cavalier has made substantial investments to roll out these services in new markets across its footprint.⁸ Cavalier and other CLECs, including DSL.net and Penn Telecom, are using copper loops and xDSL transmission technology to provide “Mid-band” Ethernet services, filling a gap in the market for data intensive business that need more than the 1.544 Mbps of a DS1 but neither need nor can afford the

⁴ Comments of Isfan Solutions, *Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, RM-11358, at pp. 2, 14 (March 1 2007).

⁵ Isfan Solutions Comments, RM-11358 at p. 9.

⁶ *Id.* at p. 10.

⁷ Ex Parte Letter from Philip J. Macres, Counsel to Cavalier, to Marlene H. Dortch, FCC, Nov. 14 2007 at Attachment p. 2; See Light Reading, Cavalier Launches MPEG-4, May 25, 2006 at http://www.lightreading.com/document.asp?doc_id=95796.

⁸ See Ex Parte Letter from Philip J. Macres, Counsel to Cavalier, et al, to Marlene H. Dortch, FCC, at p. 3 (filed Nov. 16, 2007).

44.736 Mbps available from DS3 service.⁹ If Verizon's forbearance petitions are granted it would not only strand the significant investments these CLECs have already made, but would deter other CLECs in other markets from making similar investments in the future.

These CLEC innovations delivered using unbundled legacy copper loops are the outgrowth of the deliberate policy course the Commission established in the *TRO* declaring that the "obligation to encourage infrastructure investment tied to legacy loops is more squarely driven by facilitating competition and promoting innovation."¹⁰ The Commission explained that its unbundling rules should "encourage both intramodal and intermodal carriers (*in addition to incumbent LECs*) to enter the broadband mass market and *make infrastructure investments in equipment*."¹¹ Companies like Cavalier, DSL.net, Penn Telecom and others are acting on that incentive and the Telecom Investors will continue to provide capital for such infrastructure investments as long as the copper loops remain available at efficient prices.

In a time when complaints abound that this nation lags behind in broadband deployment, the Commission should encourage *greater* investment in making use of this valuable resource. While it is unlikely that copper loops will be able to compete with multiple gigabytes per second speeds possible over fiber-optic cable, it is also unnecessary — the fact remains that most users currently do not need 1 Gbps, and for most mass-market consumers copper remains a powerful economic alternative to fiber-based services that they may never receive. Unfortunately, if Verizon is no longer obligated to make available unbundled loops and transport, CLECs would likely have no other choice than to exit the market or abandon services and customers served over copper loops.

Of course if CLECs exit markets because they can no longer economically access bottleneck transmission facilities such as copper loops, innovation will suffer and consumers will suffer. Recent history suggests that "innovations have been more rapidly deployed in telecommunications networks" where there are more competitors not fewer.¹² Innovation thrives and advances more rapidly in less concentrated markets.¹³ Facing less

⁹ See Craig Matsumoto, *Copper Ethernet Makes Strides*, Light Reading, in Unstrung.com, June 6, 2006, at http://www.unstrung.com/document.asp?doc_id=96236; See e.g. *Ex Parte* Letter from Phillip J. Macres, Counsel to Cavalier, *et al*, to Marlene H. Dortch, FCC, at Attachment p. 2. (filed Nov. 14 2007).

¹⁰ *TRO*, ¶ 244.

¹¹ *Id.* (emphasis supplied).

¹² Howard Shelanski, *Competition and Deployment of New Technology in U.S. Telecommunications*, 2000 U. Chi. Legal F. 85 (2000).

¹³ Brett M. Frischmann and Mark A. Lemley, *Spillovers*, 107 Colum L Rev 257, 281 (2007) ("[i]nnovation ... is generally spurred by decentralized competition.").

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competition through innovation, a company with market power such as Verizon “might be able to slow its own innovative efforts ... thereby entrenching its monopoly power in the future.”¹⁴

For these reasons, the Commission should deny Verizon’s forbearance petitions as contrary to the public interest.

Respectfully submitted,



Andrew D. Lipman
Joshua M. Bobeck

Counsel for M/C Venture Partners and Columbia Capital

cc: Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Tate
Commissioner Robert McDowell
Ian Dillner
Scott Deutchman
Scott Bergmann
Chris Moore
John Hunter
Dana Shaffer
Jeremy Miller
Tim Stelzig

¹⁴ Steven C. Salop, R. Craig Romaine, *Preserving Monopoly: Economic Analysis, Legal Standards, And Microsoft*, 7 Geo. Mason L. Rev. 617, 623 (1999).